STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. GERARD TRUDEL
Judge, 24th District Court
6515 Roosevelt Road
Allen Park, MI 48101-2524
_____/

DOCKET NO. 121769
FORMAL COMPLAINT NO. 68

DECISION AND RECOMMENDATION FOR ORDER OF DISCIPLINE

At a session of the Michigan Judicial Tenure Commission held on March 10, 2003, at which the following Commissioners were

PRESENT: James Mick Middaugh, Chairperson
Hon. Barry M. Grant, Vice Chairperson
Richard Simonson, Secretary
Henry Baskin, Esq.
Hon. William B. Murphy
Carole L. Chiamp, Esq.
Hon. Pamela R. Harwood
Hon. James C. Kingsley
Hon. Kathleen J. McCann

I. Introduction

The Judicial Tenure Commission ("Commission") issued Formal Complaint No. 68 against Hon. Gerard Trudel ("Respondent"), Judge of the 24th District Court, located in Allen Park, Michigan. At the Commission's request, the

Michigan Supreme Court appointed a Master to hear the evidence and make proposed findings of facts and conclusions of law. The hearing was conducted in October 2002, and the Master filed his Findings of Fact and Conclusions of Law on January 8, 2003. The Examiner presented further testimony and exhibits at a hearing before the Commission on February 10, 2003. Based on the record in this matter, the Commission finds judicial misconduct as set forth below. The Commission, therefore, recommends that the Michigan Supreme Court enter an order removing Honorable Gerard Trudel from office.

II. PROCEDURAL HISTORY

On June 14, 2002, the Commission filed a petition in the Supreme Court to suspend the Respondent on an interim basis. Due to the confidentiality requirements of then-MCR 9.222, the motion was made under seal. A copy of the motion was served on Respondent's then-attorney.

On July 2, 2002, the Court entered an order granting the petition for interim suspension (Docket No. 121769). The Court further ordered that the suspension was with pay. The Court also suppressed the file until further order of the Court.

On July 18, 2002, the Commission filed Formal Complaint No. 68. The Commission also petitioned the Supreme Court to appoint a Master, and to unseal and consolidate the Court's file concerning the interim suspension of Respondent.

On July 26, 2002, the Supreme Court unsealed the file and appointed Hon. Roman S. Gribbs as Master.

On August 5, 2002, Respondent, through counsel, filed an Answer and Affirmative Defenses to the Formal Complaint. A pretrial was held on August 23, 2002, and a scheduling order was entered August 28, 2002. The parties were disputing the right of the Respondent to file motions for summary disposition.

On September 6, 2002, the Master entered an order allowing the Respondent to file motions. On September 13, 2002, Respondent filed an Amended Answer. On September 23, 2002, Respondent filed a Corrected Copy of a Motion for Dismissal of Count II, Paragraphs 8 – 12, Paragraphs 24 and 25, and Count IV in its entirety.

On September 26, 2002, Respondent's counsel filed a motion to withdraw. On September 27, 2002, Respondent filed his appearance *in propria persona* and a motion seeking to adjourn the proceedings until after December 11, 2002.

On September 27, 2002, the Examiner filed a Reply and Brief in Opposition to Respondent's motion for partial dismissal. On October 1, 2002, the Master issued an Order granting Respondent's counsel's motion to withdraw and denying Respondent's motion to adjourn "until after December 11, 2002."

On October 3, 2002, the Master heard oral argument on the Respondent's motion for partial dismissal, as well as the Examiner's motion *in limine* to bar

certain irrelevant testimony. At that hearing, the Master adjourned the scheduled hearing date on the Formal Complaint from October 15, 2002 to October 21, 2002. The Master also denied Respondent's motion for partial dismissal, and granted the Examiner's motion *in limine*.

On October 17, 2002, Respondent filed an Emergency Motion for Stay of Proceedings and Superintending Control, Motion for Immediate Consideration, and Brief in Support in the Supreme Court. On October 21, 2002, the Commission filed its reply.

The hearing began on October 21, 2002 and continued through October 23, 2002, resumed October 28 – 29, and resumed October 31, 2002. Respondent appeared for the hearing on October 21, 2002 and October 22, 2002 only. On October 23, 2002, his 24th District Court secretary called the Commission office and stated Respondent was "not available" and was going to the doctor. Respondent failed to contact the Examiner, Commission staff or the Master. He also failed to respond to written requests and telephone calls for information concerning his status. On October 23, 2002, the Supreme Court issued an order denying Respondent's motions for Stay of Proceedings and Superintending Control.

On October 31, 2002, the Examiner rested. The Master issued an Order closing the proofs, authorizing the Examiner to amend Formal Complaint No. 68 to

conform to the proofs, and establishing a deadline of December 13, 2002, for submitting to the Master, and serving on each other, Proposed Findings of Fact and Conclusions of Law. The Examiner complied with the October 31, 2002, order setting deadlines, but the Respondent did not file anything.

On January 8, 2003, the Master issued a 40-page report in which he found, with two minor exceptions, that the allegations in Formal Complaint No. 68 had been established by a preponderance of the evidence. The Master further found that Respondent was guilty of misconduct in office and conduct clearly prejudicial to the administration of justice. The Respondent did not object to any finding by the Master.

On January 17, 2003, the Commission issued an order setting February 10, 2003 for oral argument on any properly filed objections to the Master's report. The Commission also ordered that the Examiner could present additional evidence before the Commission. On that same day, the Examiner served notice on the Respondent of his intent to produce additional evidence. On January 23, 2003, the Examiner served the Respondent with a second notice of intent to present additional evidence.

On February 10, 2003, the Commission took testimony from two witnesses and received a number of additional exhibits, including one relating to the Commission's out-of-pocket costs in prosecuting this matter. The Examiner also

offered an oral closing argument. As he has ever since the third day of the hearing in this matter, Respondent failed to appear.

The Commission carefully considered the Master's report, evaluated the hearing transcripts and exhibits, reviewed the Examiner's brief, took additional testimony and heard oral argument. Pursuant to MCR 9.220(B)(1), the Commission adopts substantially all of the Master's findings of fact and conclusions of law and also affirms all evidentiary rulings he made.

III. FINDINGS OF FACT

A. Respondent's application for worker's compensation disability benefits was fraudulently based on a claim of work-related mental disability during a period in which he was actually serving an unpaid disciplinary suspension imposed by the Supreme Court.

On January 23, 2002, the Michigan Supreme Court issued an Order of Discipline in a prior matter against Respondent, which included a public censure and a 90-day suspension without pay, to begin on January 24, 2002 and end on April 23, 2002. Respondent admitted various acts of misconduct and consented to the imposition of that discipline as evidenced by his waiver and consent in that matter. (Exhibit 24)

On April 23, 2002, the last day of his suspension without pay, Respondent submitted an application to the Bureau of Workers' Disability Compensation

seeking mental disability benefits for the period beginning January 24, 2002 through at least April 23, 2002, the exact duration of his suspension. *Id*.

Respondent described the "nature of the disability and the manner in which the injury or disablement occurred" on the form as follows: "[Respondent] developed a work-related mental disability in the course of his employment." *Id*. He did not disclose on the application that the reason he had not worked from January 24, 2002 through April 23, 2002 was that he was serving a disciplinary suspension for that period of time. *Id*.

Respondent signed the application form that contained the following certification: "I hereby certify that the above information is true to the best of my knowledge. I also certify that I have, as of this date, mailed to my employer or its insurance carrier copies of any medical records relevant to this claim that are in my possession." *Id*.

Respondent retained full health benefits during the period of his disciplinary suspension. (Respondent's Exhibit 1 and Volume 1, pp. 485-486, *Hilliker* and Vol. 2, pp. 485-486, *Pulido*) Respondent intentionally made the statements on the disability application form so as to receive mental disability benefits for the period he was on disciplinary suspension.

B. Respondent absented himself from court for lengthy periods of time.

In each of the last three years, Respondent has taken an extended leave of absence claiming an inability to work due to alleged mental problems. Respondent was absent for three months in 2000, three months in 2001, and again for five weeks in 2002. Respondent's three-month absences from court in the summers of 2000 and 2001, ostensibly due to undefined "medical reasons," were spent primarily in Southern California.

Respondent was absent from court from July 5, 2000 until September 27, 2000, during which time he received full pay. (Volume 1, p. 38, *Hilliker*) For most of that period, Respondent was in Newport Beach, California. He drove to and from California, and stayed in an apartment he rented before he left Michigan. (Exhibit 64, October 31, 2002 Bench Trial Transcript, *Gerard Trudel v Thomas J. Byrd, M.D. and Byrd Eye Clinic*, 02-12-GC, pp. 19-21, *Trudel*)

On July 26, 2000, Respondent submitted a letter to the State Court Administrative Office ("SCAO") from Dr. Raul J. Guerrero, Psychiatric Services of Grosse Pointe. Dr. Guerrero stated, "Please be advised that Mr. Gerard Trudell [sic] has been under my care since June 2, 2000. I have directed him to take an indefinite leave for medical reasons." (Exhibit 1)

On August 12, 2000, Respondent's psychologist, Dr. Maureen Sinnott, wrote a letter to Jacqueline Theisz, Esq.[1], in which she stated, "Mr. Gerard Trudel has been under my care since July 27, 200 [*sic*]. It is my professional opinion that he should not be involved in any court proceedings[2] at this time due to his inability to concentrate, forgetfulness, and difficulty making decisions. If you have any further questions please feel free to contact me." (Exhibit 15 and Volume 4, pp. 574-475, *Sinnott*)

Notwithstanding Respondent's alleged inability to work, he was in constant contact with the court, and called the court administrator virtually on a daily basis during his leave. (Exhibits 2, 3, 4, and 5 and Volume 1, pp. 41-52, *Hilliker*) Respondent also communicated with court staff and signed and transmitted orders via facsimile. (Exhibits 6 and 7, and Volume 1, pp. 53-56, *Hilliker*)

On October 16, 2002, four days prior to the initiation of these proceedings and two years after the fact, Respondent had the 24th District Court Administrator change 30 of the 63 medical/sick days (excluding weekends and holidays) he took in 2000, to vacation days. (Exhibit 8, Volume 1, pp. 59-60, *Hilliker*) Region I State Court Administrator Delores Van Horn was unaware of anyone ever

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1 Ms. Theisz represented Respondent, the defendant in a divorce action brought by his former wife, *Maria Ortega Trudel v Gerard B. Trudel*, Wayne County Circuit Court No. 00-004880-DM.

2 This ostensibly referred to his divorce litigation only.

changing 30 medical leave days to vacation days. (Volume 6, pp. 965-966, *Van Horn*)

On January 23, 2001, Dr. Sinnott, sent a letter to Region I State Court Administrator Delores Van Horn in which she stated,

> "I have been seeing Mr. Gerard Trudel since July 27, 2000 for psychotherapy. He phoned me last night stating that you are requesting confirmation from me that he is able to function at his full capacity at work. Mr. Trudel does not have any depressive symptoms (including suicidal or homicidal ideation) at this time, which would prevent him from working at full capacity." (Exhibit 16 and Volume 4, p. 581-582, *Sinnott*)

Respondent was again absent from court from June 27, 2001 through October 30, 2001, during which time he received full pay. (Volume 1, p. 66, *Hilliker*) For most of that period, he was in Newport Beach, California.

On June 25, 2001, Respondent's psychologist, Dr. Maureen Sinnott, sent a letter to Region I State Court Administrator Delores Van Horn in which she stated, "As you know, I have been seeing Mr. Gerard Trudel since July 27, 2000 for psychotherapy. I recommend that he take an indefinite leave of absence at this time. Thank you for your understanding in this matter." (Exhibit 17 and Volume 4, pp. 583-585, *Sinnott*)

Also on June 25, 2001, notwithstanding Respondent's alleged inability to work, he met with Dr. Thomas Byrd for a consultation concerning the viability of cosmetic (Lasik) eye surgery. He advised Dr. Byrd he was departing for California.

Respondent also arranged to rent an apartment to stay in while in California, and drove there and back. (Exhibit 64, pp. 19-21, *Trudel*)

After serving his 90-day suspension from January 24, 2002 through April 23, 2002, Respondent was scheduled to return to his judicial duties on April 24, 2002. On that day, without prior notice to the 24th District Court Chief Judge, court staff, or SCAO, Respondent advised the Chief Judge that he was going on a "medical disability" effective immediately because he could not perform his judicial duties due to the ongoing Judicial Tenure Commission investigation. (Volume 6, pp. 908-910, *Courtright*)

In a confirming memo to Respondent, Chief Judge Courtright asked Respondent to advise him "immediately" if his "medical condition changes in any way." Respondent never complied with the Chief Judge's directive. (Exhibit 49 and Volume 6, pp. 911-912, *Courtright*)

On April 26, 2002, SCAO received a letter from Dr. Sinnott, dated April 16, 2001 [sic], that stated: "Since July 27, 2000 I have been seeing Mr. Gerard Trudel for psychotherapy. I met with him today and recommended that he take an indefinite leave of absence at this time due to his depression. Thank you for your understanding in this matter." (Exhibit 18 and Volume 4, pp. 591-593, *Sinnott*)

On May 1, 2002, John Ferry, Jr., the State Court Administrator, wrote Respondent's psychologist requesting elaboration on the diagnosis of "depression"

as applied to Respondent, and additional information regarding his condition, and an assessment as to a likely return date. (Exhibit 19)

On May 9, 2002, John Ferry, Jr. wrote Respondent advising that his psychologist had not responded and that arrangements had been made for an independent medical examination unless he or his doctor advised he could "safely" return to work within the next week. (Exhibit 51)

On May 14, 2002, Respondent wrote John Ferry, stating he and his psychologist decided no further elaboration would be forthcoming until after he met with Dr. Raul Guerrero who might change his medication. (Exhibit 65)

On May 14, 2002, Dr. Sinnott also wrote Mr. Ferry. She stated Respondent "continues to be severely depressed" and that the most serious "stressor" was the continued investigation by the Judicial Tenure Commission. She added she had "serious doubts that he would be able to function effectively as Judge while trying to defend himself against continued allegations" and concluded that it was her "professional opinion that premature return to his judicial duties while being investigated by the Commission will interfere with his recovery." (Exhibit 20 and Volume 4, pp. 595-597, *Sinnott*)

In or about the middle of May, 2002, Respondent sporadically went to his office at the 24th District Court for reasons unrelated to his judicial duties. Respondent did not inform the Chief Judge of his presence or whether he had been

declared fit to serve again. (Volume 1, p. 71, *Hilliker;* Volume 4, pp. 639-640, *Straub*; Volume 6, pp. 924-925, *Courtright;* and Volume 6, p. 963, *Van Horn*)

As a result, on May 24, 2002, Ms. Van Horn wrote Respondent and advised him if he was unable to perform his judicial duties, including handling a regular docket, he should not be at the court, and if his health had improved to the extent that he was able to return to work, he should advise court staff immediately so that his schedule could be arranged. She also informed Respondent that he should advise the Region I SCAO office in writing immediately if he had recovered sufficiently to return to work. He did not comply with the SCAO request for written notification. (Exhibit 53 and Volume 6, p. 693, *Van Horn*)

On May 23, 2002, Respondent wrote 24th District Court Chief Judge Courtright seeking assistance for his legal defense. Respondent admitted his failure to return to work was due to the "personal difficulty" of defending himself, and that the court's assistance might "help to resolve the situation which has resulted in my medical leave of absence." (Exhibit 52)

On May 29, 2002, Respondent returned to work and began assuming his judicial duties without providing prior written or oral notice to Chief Judge Courtright or SCAO, and without providing notice from his psychologist or psychiatrist approving his return. (Exhibit 55 and Volume 6, pp. 926-927, *Courtright* and Volume 6, p. 964, *Van Horn)*

Respondent had been absent from court for 35 days, during which time he received full pay.

C. Respondent harassed, intimidated and retaliated against former and current court employees and City Council members.

On April 5, 2001, Connie Trissell, a former 24th District Court employee and her husband Robert Trissell, former 24th District Court employee Suzanne Molter, Timothy Straub, a current 24th District Court employee and his wife, Christina Straub, filed lawsuits against Respondent. (Exhibit 62) On April 27, 2001, Giovanna Williams, a former 24th District Court employee and her husband, David Williams, also filed a lawsuit against Respondent. (Exhibit 63) The complaints alleged violation of the Whistleblowers' Protection Act (MCL 15.361 *et seq*), breach of contract (retaliatory demotion), violation of the Elliott-Larsen Civil Rights Act (MCL 37.2101 *et seq* [sexually hostile work environment and retaliation]), defamation, and intentional infliction of emotional distress. All of the lawsuits were settled out of court.

On February 19, 2002, after the settlements had been negotiated, but before they were signed, Respondent sent letters to each of the plaintiffs purporting to seek the retraction of all "false statements." (Exhibits 21, 22, 28, 29, 30, 46 and 47)

The plaintiffs' attorney, Andrew Munro, testified Respondent's action in sending the letters nearly derailed the settlement, and he had to verify that Respondent's attorneys had no idea Respondent had taken such an action. (Volume 4, p. 679, *Munro*)

Respondent also sent Allen Park City Administrator Kevin Welch a letter asking him to retract false statements he allegedly made about Respondent on April 10, 2001, particularly in regard to allegations of "extortion." (Exhibit 45) Mr. Welch found the letter upsetting. (Volume 5, pp. 866-867, *Welch*) The letters purported to seek retraction of all "false statements," pursuant to MCL 600.2911. In some instances, Respondent demanded retraction of allegations of "extortion." Respondent sent a similar letter to the Mayor of Allen Park, Levon King. (Exhibit 48)

David B. Tamsen, Allen Park City Attorney, testified he and Kevin Welch were surprised he did not receive a retraction letter. He also testified he advised the Allen Park Downtown Business Authority that Respondent had approached him because he wanted to purchase a building to open a nightclub. (Volume 4, pp. 711-714, *Tamsen*)

On October 15, 2002, Respondent filed a lawsuit in Wayne County Circuit Court alleging, *inter alia*, Concert of Actions, Civil Conspiracy, Intentional Inflection of Emotional Distress, Negligent Infliction of Emotional Distress,

Invasion of Privacy, Abuse of Process, False Light, and Defamation against 11 individuals: Maria Lilia Ortega, Levon G. King, Suzanne Molter, Connie Trissell, Robert R. Trissell, Timothy Straub, Christine D. Straub, Giovanna Williams, David Williams, Cynthia Pruett and Kevin Welch. (Exhibit 33)

Nine of the individuals sued by Respondent (all except Maria Lilia Ortega and Cynthia Pruett) were named on the Examiner's witness list to testify against Respondent during the hearing before the Master on Formal Complaint 68. A copy of the Examiner's Witness List had been previously served on Respondent.

The formal hearing was originally scheduled to begin on October 15, 2002 (the same day Respondent filed his lawsuit), but was adjourned until October 21, 2002, by the Master, *sua sponte*, to accommodate Respondent's change of status to *in propria persona*.

D. Respondent frequently engaged in aggressive, threatening, retaliatory, and unprofessional conduct.

On May 15, 2001, during the deposition of a former 24th District Court employee who brought suit against Respondent, the plaintiff's attorney, Andrew J. Munro, was in discussion with Respondent's attorney, Michael Weaver. Respondent interrupted and Mr. Munro asked Mr. Weaver whether Respondent was still a judge. Respondent became agitated and aggressive, called Mr. Munro "asshole," and asked him to step outside in the parking lot to "settle matters like

men." When Mr. Munro told him "No," Respondent began to go after him. (Volume 4, pp. 676-677, *Munro*) Respondent's counsel interceded, and held him back. (Volume 4, pp. 631-632, *Straub,* Volume 4, pp. 666-668, *Trissell*)

Respondent entered into a lease agreement with the City of Melvindale, which funds one-third of the court's budget, to purchase a building to expand the court, without adequately determining its suitability. He prepaid the lease and provided no notice to the City of Allen Park, which funds the other two-thirds of the court's budget, created hostility between the two funding units and between himself and the City of Allen Park, as well as numerous other problems. (Volume 4, pp. 685-686, 690, *Tamsen*; Volume 5, pp. 788-790, Volume 5, pp. 854-862, *Tertzag;* Volume 6, p. 957, *Van Horn*) When Allen Park City Councilman Kyle Tertzag asked him why he handled the matter the way he did, he replied, "You fucked me, so I fucked you." Respondent was referring to the fact that the Allen Park City Council demurred on paying for his legal representation during the earlier investigation by the Judicial Tenure Commission. (Volume 5, pp. 785-792, *Tertzag***)**

Respondent refused to submit necessary budget and other information relative to resolving the court's expansion and parking needs to the Allen Park City Council, even after repeated requests, requiring the State Court Administrator's

intervention on more than one occasion. (Volume 4, pp. 699, 717, *Tamsen*; Volume 6, pp. 956-959, *Van Horn*)

Sometime in February or March 2001, Respondent was in the office of Allen Park City Councilman Michael Bowdell. Mr. Bowdell was making a point with which Respondent disagreed. The conversation became heated. Mr. Bowdell stood up, in a non-aggressive manner, to try to make his point. Respondent told Mr. Bowdell to sit down. Mr. Bowdell refused. Respondent stood up and again told Mr. Bowdell to sit down. When Mr. Bowdell refused, Respondent pushed him with both hands, with sufficient force to back him up two or three feet against the windows of his office. (Volume 5, pp. 805-808, *Bowdell*)

Respondent heard about certain resolutions drafted by Mayor Levon King, that would have impacted him negatively that he mistakenly believed were going to be presented at the Allen Park City Council meeting on April 10, 2002. The rejected draft resolutions called for the investigation and removal of Respondent (Exhibit 34), the audit of the 24th District Court (Exhibit 35), and removal of Respondent as Chief Judge (Exhibit 36).

On April 10, 2001, Leo Lanctot, Director of Court Services and former Allen Park Police Chief, told Kevin Welch, Allen Park City Controller/Administrator, and David Tamsen, Allen Park City Attorney, of Respondent's intent to retaliate against certain people. Lanctot said that

Respondent intended to make embarrassing or politically harmful information about Tamsen, and three City Council members (Janene Rossman, Kyle Tertzag, and Michael Bowdell) public if the City Council passed the resolutions at its April 10, 2001 meeting. (Volume 5, pp. 862-866, *Welch*; Volume 4, pp. 703-709, *Tamsen*)

Leo Lanctot also told Mr. Tamsen that Respondent told him "he has nothing to lose" and that he was going to take as many people with him as he could if he was going down. (Volume 4, p. 705, *Tamsen*) Mr. Tamsen advised Leo Lanctot that his comments sounded a lot like extortion or blackmail. Within minutes after Mr. Lanctot left Mr. Tamsen's office, Respondent called Tamsen and referred to the resolutions. (*Id*. at 706-707)

Mr. Tamsen was offended by the fact that an authority figure like Respondent, who is supposed to be fair and just, would try to use information, whether true or false, to gain what he wanted. (*Id*. at 709)

Allen Park City Councilman Michael Bowdell asked Respondent why, based on both their personal and professional relationship, he would make threats like that? (Volume 5, p. 804, *Bowdell*) Respondent replied, "My back was against the wall . . . what else could I do?" *Id.*

Respondent created controversy and destroyed trust between the court and Allen Park City officials and City Council as a result of his actions. The intended

victims took the statements as threats. (Volume 4, p. 726, ; Volume 5, pp. 793-794, *Tertzag*)

On or about March 24, 2000, after an Allen Park City Council meeting, Councilman Kyle Tertzag entered Dunleavy's, a local Allen Park bar, where Respondent was seated with several city officials. Mr. Tertzag greeted them and extended his hand to Respondent, who responded, "Fuck you." (Volume 5, pp. 794-795, *Tertzag*)

In or about August 1999, Respondent convinced the Allen Park City Council to listen to him in closed executive session until Councilwoman Rossman consulted the City Attorney who stated the closed session was illegal. Respondent demonstrated his displeasure with Ms. Rossman by ignoring her and refusing to speak to her. (Volume 4, pp. 718-724, *Rossman*) A mutual acquaintance later arranged for Ms. Rossman to meet the judge in his office. Ms. Rossman explained the reason she did what she did at the meeting. Respondent smiled and chuckled. He then replied, "Janine, don't you know I am a judge? Don't you know what I can do to you politically? You know, I have a lot of power. Don't you understand that?" (*Id*. at 724-726)

E. Respondent engaged in a pattern of sexually related inappropriate conduct, racially insensitive conduct, and conduct that created an appearance of impropriety with certain female court employees.

Respondent spent inordinate amounts of time in the offices of certain female employees, including Staci Sukel (then Brooks), Michelle Albright (then Cousino), and Karen Powell. (Volume 1, pp. 25-32, *Hilliker*; Volume 2, p. 379, *Krizan*; Volume 2, pp. 475-476, *Pulido*; Volume 4, pp. 660-662, *Trissell*; Volume 4, pp. 737-738, *Molter*)

Several employees saw Respondent and Karen Powell maintaining inappropriate physical proximity. (Volume 1, pp. 32-33, *Hilliker*; Volume 2, pp. 475-476, *Pulido;* Volume 4, pp. 659-660, *Trissell*). Respondent often made inappropriate sexual comments to Staci Sukel (then Brooks), a probation officer and later probation director at the 24th District Court, about women engaging in oral sex together.

Respondent told Ms. Sukel that Michelle Cousino was attracted to her, implying it was a sexual attraction. (Volume 2, pp. 325-326, *Sukel*)

On at least two occasions, in 1994 and 1995, Respondent made unwanted physical advances to Ms. Sukel, including hugging and kissing, and on several other occasions encouraged her to participate in sexual activities with him.

On one occasion Ms. Sukel was leaving the building after working late. Respondent came up behind her, put his arms around her and tried to kiss her. He stopped when she started crying and told him "no." (*Id*. at 328)

On another later occasion, Ms. Sukel was preparing to leave shortly after the workday ended. Respondent called her to his office. When she arrived he put his arms around her and kissed her or tried to kiss her as she backed away from him. When she turned to leave she saw Michelle was also in his office. As she left she heard the two of them "snickering and laughing." (*Id*. at 331-332)

Jenita Moore, a 24th District Court employee from April 1994 until December 1998, was the court's only African-American employee. Around the time she was hired Respondent stated in a conversation, "Now I have my token black." (Volume 2, pp. 353-354, *Anderson*)

Sometime in 1995, referring to Ms. Moore, Respondent said to Timothy Straub, a court officer, that he (Respondent) would "like some of that sweet chocolate." Ms. Moore was offended when she heard about the remark. (Volume 4, pp. 618-620, *Straub* and Volume 2, 292-294, *Moore*)

In the spring of 1996, female court employees rented a bus to attend a bachelorette party for fellow employee Dawn Grubbs. After Ms. Moore signed the list of people who were to attend, Respondent made a comment to her about having to sit at the back of the bus. (Volume 2, pp. 295-296, *Moore*)

Ms. Moore also was offended by what she felt was Respondent's personal attack on her when he questioned her, in front of witnesses, about whether she had driven by his house, which she deemed a ploy because he was angry about something else. (*Id*. at 313-317)

F. Respondent displayed marked favoritism toward certain employees while harassing and abusing others.

Respondent favored certain employees with whom he would joke, go to lunch, make exceptions regarding misconduct, and socialize outside of court, including, but not limited to Michelle Albright, Karen Powell, and Beth Levack. (Vol 2, pp. 355-356, *Anderson*; Volume 4, pp. 654-655, 660-662, 664, *Trissell*, volume 4, pp. 737-738, 745-748*, Molter*; and Volume 5, pp. 875-877, *Williams*)

Respondent frequently played cards during court hours with certain favored employees, and would allow them to punch in at the end of a break and then continue to play cards while other employees had to strictly adhere to break times. (Volume 2, pp. 392-398, *Krizan* and Volume 2, pp. 492-494, 505, *Pulido*)

Respondent harassed and abused certain court employees including, but not limited to, Connie Trissell, Suzanne Molter, Timothy Straub, Giovanna ("Jodie") Williams, and Margaret Krizan. Examples of Respondent's continuing pattern of

disparate, disrespectful and harassing treatment of certain employees include the following:

1. Respondent ignored and refused to speak to court employees Margaret Krizan, Connie Trissel, Suzanne Molter, Timothy Straub, and Jodie Williams for several months. (Volume 1, pp. 35-37 and 68-69, *Hilliker;* Volume 2, pp. 398-399, *Krizan;* Volume 4, pp. 657-658, *Trissell;* Volume 4, pp. 743-744, *Molter*; and Volume 5, pp. 877-878, 881-886, *Williams*)

2. When Respondent returned to the court after returning from his vacation/sick leave in California in October 2000, he referred to court employees Connie Trissell, Suzanne Molter, Timothy Straub, Jodie Williams, and Margaret Krizan as "evil." Respondent spoke of wanting to eliminate the "evil at my court," that he would not have "evil" at his court, that he "had a plan" to get rid of the "evil," and that it would not set foot in his court again. (Volume 2, pp. 487-490, *Pulido*; see also Volume 4, pp. 750-751, *Molter*)

3. Respondent transferred court employees to the former carpet store building (the now Court Services Building), before it was ready for use.

4. Court employees were required to be physically present in the building without a certificate of occupancy. (Volume 4, p. 633, *Straub*) At the time the employees were forced to move into the building, there was no running water, no working toilets, no phones, no desks, chairs, or computers, and it was filthy. (Volume 4, p. 663, *Trissell*; Volume 4, p. 628, *Straub*; Volume 4, pp. 751-752, *Molter*)

5. Probation officers Connie Trissell and Suzanne Molter, and court officer Timothy Straub were told by Leo Lanctot, hired by Respondent as Director of Court Services, that Respondent had ordered them to never sit foot in the 24th District Court building again. (Volume 4, p. 665, Trissell; Volume 4, pp. 752-753, *Molter*; Volume 4, p. 628, *Straub*) Respondent's "rule" prevented them from performing their jobs properly. (Volume 4, pp. 753-754, *Molter*)

6. Respondent also prohibited employees and others with whom he was angry from entering his courtroom on court business. (Volume 4, pp. *Tamsen*; Volume 4, p. 755, *Molter*)

7. Respondent frequently stared or glared at employees, or gave "the look," which frightened and intimidated them. Probation Officer Connie Trissell, for example, described the look as a scary one that "sent a chill up her spine." (Volume 1, p. 34, *Hilliker*; Volume 2, pp.

290-291, *Moore*; Volume 2, pp. 322-323, *Sukel*; Volume 2, p. 356, *Anderson*: Volume 2, p. 377, *Krizan*; Volume 2, p. 476, *Pulido*; Volume 4, p. 620, *Straub*; Volume 4, pp. 655-657, *Trissell*; Volume 4, pp. 743-744, *Molter*)

8. Respondent frequently threatened employees with the loss of their jobs. (Volume 2, pp. 501-502, *Pulido*; and Volume 4, p. 757, *Molter*)

9. Former 24th District Court probation officer Suzanne Molter testified Respondent would comment: "Don't you know who I am? . . . This is my court . . . Is there any question who is in charge? . . . I am God . . .) (Volume 4, pp. 755-756 and p. 759, *Molter*)

10. Deborah Green, former Allen Park City Attorney who became 24th District Court Administrator, and is presently employed as the 33rd District Court Administrator, testified Respondent was very volatile, dictatorial, had favorites at the court, carried grudges and that most of the court staff was afraid of him. (Volume 4, pp. 728-729, *Green*) She also testified Respondent became upset with her and gave her the "silent treatment" after she terminated one of his favorites, Michelle Albright (formerly Cousino), for lying and trying to induce a subordinate staff member (Suzanne Molter) to lie about their whereabouts when Ms. Albright decided to remain in Las Vegas when

she was supposed to attend a probation seminar with Ms. Molter. (*Id*. at 730-735 and see Volume 4, pp. 739-742, *Molter*)

11. After Ms. Green left the employ of the 24th District Court, Respondent rehired Michelle Albright. He then told employees that Suzanne Molter was "evil" and that those who aligned themselves with her would go down with her. (Volume 4, pp. 658-659, *Trissell*)

12. Respondent's moods were so unpredictable and volatile, court employees used code phrases to warn each other of the state he was in. (Volume 2, p. 375, *Krizan* and see Volume 4, p. 756, *Molter*) He often browbeat employees until they agreed with whatever he said just to get away. (Volume 2, pp. 375-376, 427, *Krizan* and Volume 4, pp. 744-745, *Molter*)

13. Many court employees were afraid of Respondent. (Volume 5, pp. 874-875, Williams. Some employees were so frightened they had escape routes planned. (Volume 2, pp. 490-491, *Pulido*; Volume 4, pp. 768-770, *Molter*)

14. On one occasion in 2001 or 2002, Court Officer Timothy Straub was walking around the building, looking in each room to see if everything was all right. When he looked into one of the probation officer's rooms, Respondent was standing there and when he saw Mr. Straub,

he slammed his hand against the window in the door, shattering it. (Volume 4, p. 625-626, *Straub*)

15. Respondent would also shoot rubber bands at Mr. Straub. (Volume 2, p. 356, *Anderson* and Volume 4, p. 627, *Straub*)

16. Sometime in 1995, Respondent went to Court Officer Timothy Straub and told him to move his car. When Mr. Straub asked why, since there were no reserved spaces for employees, Respondent said it was reserved for his secretary. Mr. Straub asked if they could discuss it. Respondent angrily told him to just move it or be suspended for three days, and when Mr. Straub again asked if they could talk about it, Responded said, "That's it, three days' suspension. Get out of her and get out of here now." (Volume 4, p. 623, *Straub*)

17. In or about February, 1996, Respondent requested his former court recorder/secretary, Margaret Krizan, to transcribe a phone call from the irate parent of Cindy Rigsby, a former young female court employee. Respondent asked Ms. Krizan whether she listened to the phone call and angrily demanded she come into his office and shut the door. When she refused to come in with the door shut, because Respondent's demeanor frightened her, Respondent called for a court

officer to escort her from the building. (Volume 2, pp. 381-392, *Krizan*)

G. Respondent misused court time, personnel, facilities and equipment.

Respondent used 24th District Court computer equipment and Internet services to access Internet sites for his personal benefit, which included adult-only pornographic sites. (Volume 2, pp. 402-404, *Krizan*) The Master reviewed a print-out of one of the sites, which is clearly pornographic. (Volume 6, pp. 942-943, *Fischer*)

Respondent frequently played cards during work hours with certain employees, police officers and on the computer, at times delaying court proceedings. (Volume 2, pp. 392-401, *Krizan*, Volume 4, pp. 748-749, *Molte*r; Volume 4, p. 625, *Straub*)

H. Respondent failed to cooperate with requests by the Examiner and the Master for information after he stopped appearing at the hearing.

Formal proceedings in this matter began on October 21, 2002. Respondent appeared and represented himself on October 21 and 22, 2002. On the third day of the hearing, October 23, 2002, Respondent failed to appear. His secretary, Michelle Albright, telephoned the Commission office and informed the staff that

Respondent was "unavailable" for the day and that he was "going to the doctor." (Exhibits 58 and 59; Volume 4, pp. 546-548, *Albright,* and see Volume 3, pp. 522-527)

Respondent telephoned Ms. Albright on October 22, 2002, in the evening, and told her he was "okay" and that he did not know what to do, *i.e.*, whether to retire or resign. (Volume 4, pp. 553-556, *Albright*) He did not return phone calls from Dr. Sinnott, but called her the morning of October 23, 2002, and claimed he did not call her the evening before because he was contemplating suicide. (Volume, pp. 564-565, 567-568, *Sinnott*)

The Master contacted Ms. Albright and instructed her to advise Respondent to telephone the Judicial Tenure Commission. She confirmed that she had given Respondent the message. (Volume 4, pp. 549-550, 555, *Albright*)

Respondent did not telephone the Judicial Tenure Commission on October 23, 24 or 25, notwithstanding the Master's directive. Respondent also failed to return a phone call to the Associate Examiner or respond to a letter from her. (Exhibits 58 and 59)

Respondent failed to appear or give any notice regarding his absence on the successive hearing dates, October 28, 29 or 31, 2002, and failed to respond to or contact the Master, Examiner or Associate Examiner in any way. Proofs were closed on October 31, 2002. (Volume 6, p. 989, *Fischer*)

On October 30, 2002, Respondent had lunch in Allen Park at the Secret Recipes restaurant with 24th District Court employees Michelle Albright and Karen Powell. (Volume 6, pp. 948-949, *Molter*)

On October 31, 2002, Respondent appeared at 9:07 a.m. as the *pro per* plaintiff in a lawsuit he filed against a medical doctor in the 24th District Court before Judge DeLaurentiis. (Exhibits 60, 61 and 64) During that hearing, in response to a comment by opposing counsel, Respondent noted,

> "I am not on a medical leave, that [*sic*] if that's what they [Judicial Tenure Commission] represented, it was incorrect. There is no hearing scheduled for this morning. I'm sure if he had called them that they would've told him that. But as Your Honor knows, there's no requirement meant [*sic*] for me to be there if I don't want to be there**."** (Exhibit 64, p. 6, *Trudel*)

I. Respondent has a personality disorder that interferes with his ability to function as a judge.

On June 25, 2002, Dr. Harvey Ager, a licensed Michigan psychiatrist (Exhibit 66) who has instructed judges and has a clear idea of what a judge should be and what duties are involved (Volume 6, p. 980, *Ager*), examined Respondent at his office in Southfield, Michigan, at the request of the State Court Administrative Office. (*Id*. at 968-969)

Dr. Ager diagnosed Respondent as having a "paranoid narcissistic personality disorder," whose perspective of the world is that "he is right and everyone else is

wrong." (*Id*. at 974) Dr. Ager noted there are two sides to the paranoid – the grandiose or expansive side, and the persecutory side and found that:

> * * * Some persons exhibit both qualities, and he's one of those people. That is to say, he has an inflated sense of self-esteem.
>
> On the other hand, when things don't go his way, he has the capacity to have thoughts of persecution that he's being victimized and other people are out to get him; there are conspiracies.
>
> Because he is paranoid, he has no virtually no insight whatsoever to himself. As a result, he's always projecting blame onto others around him. Even though he stirs up controversy around himself, he doesn't recognize that he's the one that's perpetrating and causing the controversy. He thinks it's other people doing to him [*sic*].
>
> Now, the narcissistic component means that he is very self-involved. He's extremely egotistical. People who are narcissistic have strong feelings of entitlement; that is, that the world owes him something; people should do them favors, do things for them.
>
> So the combination of both of these qualities makes him, I think, I don't know if I would say dangerous, but he's not the kind of person I would trust in a position of responsibility.
>
> MASTER: What's the characteristics of the narcissistic personality that you just mentioned? * * *
>
> WITNESS: Sure. Narcissistic people are basically egotists. They think the world revolves around them. They think people should do things for them just because they are who they are. This is a sense of entitlement they have; the world owes them something. They shouldn't

have to do things that should be coming to them just because they are who they are.

And if people don't do what they want, they take it as an insult. They have this sense that the world should cater to them. It's an extremely idiosyncratic way of looking at the world. These people basically are - - I don't know if you'd call them ego maniacs because this is what the narcissistic person is like.

* * *

BY MR. FISCHER:

Q: Would you say there was any causal relationship between his condition and his employment?

A: No. A personality disorder is something a person's had almost all of their life. Most often, it's a result of early childhood experiences, but even when you raise children, say identical twins in the exact same environment, you see differences. So I'm certain there's a certain genetic component there as well, but he had this personality in place long before he was ever elected to the bench, and under certain situations, you may see exaggerations of the personality characteristics; that is, the way he responds to stress to a certain extent is going to be dictated on his personality.

So he may be acting in a certain way that's noticeable to people around him. When he's in a stressful situation, be it at work or otherwise, but the job stress, whatever he's experiencing, isn't really altering his personality; it's not creating it or causing it. He's just reacting because of his personality.

Q. In a way he's programmed that way?

A. Exactly. Certain things happen to him, and he's programmed in a sense to respond a certain way, and in a

way he has no control over it; although, I would hope to some degree there's probably some free will there.

Q. Did he ever tell you that one of the reasons he filed for the workers' compensation is because he felt that he was entitled to benefits, including payment for his psychiatric or psychological treatment?

A. Yes. (Vol. 6, pp. 975-977, *Ager*)

Dr. Ager further testified that Respondent has inflated ideas about his own ego and inflated sense of self-esteem, but when things don't go his way he believes he is being victimized and other people are out to get him, there are conspiracies. (*Id*. at 975) Respondent's involvement in multiple litigations is also typical for paranoid individuals. (*Id*. at 977-978) Dr. Ager also attributed Respondent's abandonment of the proceedings to his personality disorder:

> [H]is ego is such he's not going to want to hear it, so I can see him trying to avoid the whole situation by not showing up. He's convinced himself there's a conspiracy, and if he shows up, all he's going to hear are a lot of untruths about himself that are part and parcel of the conspiracy. His way of dealing with it is to avoid it. (Vol. 6, p. 979, *Ager*)

Dr. Ager also explained that as Respondent's conduct results from his personality, his reactions to stress also result from his personality. Dr. Ager concluded Respondent should not be in a position of authority over others because he lacks "insight and because of his own needs and misperceptions, I wouldn't trust his decision-making in certain situations." (Vol. 6, p. 980, *Ager*)

On June 28, 2001, Respondent met with Dr. Robert Edward Erard, a clinical and forensic psychologist. (Exhibit 42) Dr. Erard was appointed by Judge William Lucas as a family counselor and to facilitate the improvement or reduction in the estrangement between Respondent and his daughter, and to decide the conditions and frequency of contacts between them. (Volume 5, p. 813, *Erard*)

Dr. Erard opined that Respondent has a "severe personality disorder with both narcissistic and paranoid features," that impairs the way one solves problems, copes with stress, and makes decisions. Such individuals are self-centered, highly sensitive to perceived slights and tend to blame other people for anything that goes wrong in their lives. When they are not receiving sufficient praise or receive resistance from others, they are at greater risk than most people for becoming enraged or depressed. Respondent demonstrated these traits and others. (*Id*. at 820-822)

Respondent had convinced his psychologist, Maureen Sinnott, Ph.D., that his alleged depression was due in great part to lack of visitation with his daughter (Volume 4, pp. 585, 598-599, 601-603, *Sinnott*), yet he ignored Dr. Erard's "strong advice" not to go to California because it would undermine their goal of reducing the estrangement, and under the judgment of divorce, Respondent would forfeit considerable summer parenting time. **(**Volume 5, pp. 815-816, *Erard***)** Dr. Erard also testified Respondent refused to cooperate with the court-ordered meetings to

facilitate visitation with his daughter. (Exhibit 43 and Volume 5, pp. 838-840, *Erard*)

Dr. Erard described the "silent treatment" and threatening conduct engaged in by Respondent against his minor daughter (*Id*. at 817, 834-835) that reflects the continuing pattern of such conduct that emerged through the testimony of other witnesses throughout the hearing.

Dr. Erard has treated and evaluated judges and other people who are in positions of authority. (*Id.* at 825) He concluded that the "narcissistic and paranoid traits at the level that we see in Judge Trudel have a potential for interfering with the impartiality and objectivity that one would wish to see in a member on the bench." *Id.*

On December 5, 2001, Respondent filed a Notice of Intent to file thirteen civil claims against Psychological Institutes of Michigan P.C., Robert E. Erard, Ph.D., and Maria L. Ortega. (Exhibit 40)

Respondent's psychologist, Dr. Maureen Sinnott (See Exhibit 14), testified that Respondent is unable to function in a judicial capacity due to his inability to cope with the many severe "stressors" in his life. (Volume 4, pp. 597, 607-611, *Sinnott*)

Dr. Sinnott diagnosed Respondent as having major depression and said he is not paranoid because in her opinion, paranoia means a person thinks people are

against him or her or talking about him or her when they are not, but in Respondent's case people are talking about him. (*Id*. at 607)

Dr. Sinnott started to cry during her testimony before the Master (*Id.* at 602), demonstrating excessive, unprofessional emotionalism and a lack of objectivity. She admitted Respondent often did not pay her and that she would see him even if he did not pay her. (*Id*. at 613-614) Dr. Sinnott submitted a health insurance claim form for workers' compensation based on information provided by Respondent, including an alleged workers' compensation injury date of January 24, 2002 (the date Respondent's unpaid suspension began). (Exhibit 10 and Vol. 4, pp. 612-613, *Sinnott*)

Both Dr. Ager and Dr. Erard disagreed with Dr. Sinnott's conclusion that Respondent should not be considered paranoid. Dr. Erard explained that paranoids tend to make strong divisions between people they think are their friends and those whom they regard as enemies. They make a lot of enemies whom they treat in hostile fashion. Over time, they accumulate real enemies, but that does not mean they are not paranoid, but rather that the paranoia has become a self-fulfilling prophecy. Dr. Erard also clarified that someone does not need to be delusional to be paranoid. It is more of a disposition to mistrust, to suspect, and "in a sense to make enemies where it wasn't necessary to do that." (*Id*. at 823-824)

Dr. Ager also stated Dr. Sinnott's opinion (Volume 4, p. 607, *Sinnott*) that Respondent was not paranoid was incorrect and demonstrated a lack of understanding concerning the paranoid individual. He also found that the fact Dr. Sinnott cried during her testimony suggested she had allowed her feelings to get wrapped up in the therapy, called counter-transfer, and that she had lost sight of what was really going on and therefore was not benefiting her patient. (*Id*. at 981-982)

J. Additional Findings Regarding Costs Incurred

The Examiner also presented an affidavit from Camella Thompson, Senior Administrative Assistant of the Judicial Tenure Commission. Ms. Thompson's affidavit showed that the Commission has incurred expenditures in the amount of $12,777.33 in court reporter fees, witness fees, and other litigation expenses, excluding Master's fees. (Exhibit 69)

IV. STANDARDS OF CONDUCT VIOLATED

The Commission finds that the Respondent's conduct violates the following standards of conduct, and thus constitutes:

(a) Misconduct in office as defined by Michigan Constitution 1963, Article VI, §30 as amended, MCR 9.205, as amended;

(b) Conduct clearly prejudicial to the administration of justice as defined by the Michigan Constitution 1963, Article VI, §30 as amended, MCR 9.205, as amended;

(c) Failure to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved as described in the Code of Judicial Conduct, Canon 1;

(d) Conduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary, contrary to the Code of Judicial Conduct, Canon 2A;

(e) Failure to respect and observe the law and to conduct oneself at all times in a manner the promotes public confidence in the integrity of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B;

(f) Failure to conduct oneself at all times in a manner that promotes public confidence in the integrity of the judiciary and failure to treat a court employee fairly and respectfully, without regard to race or gender, in violation of the Code of Judicial Conduct, Canon 2B;

(g) Allowing social or other relationships to influence judicial conduct or judgment, in violation of the Code of Judicial Conduct, Canon 2C;

(h) Failure to diligently discharge administrative responsibilities, in violation of the Code of Judicial Conduct, Canon 3B(1) and (2);

(i) Conduct involving improper judicial influence and abuse of the prestige of office in violation of the Code of Judicial Conduct, Canon 3C;

(j) Conduct violating MCR 9.104 in that it is prejudicial to the administration of justice, contrary to MCR 9.104(1); exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(2); and violates standards or rules of professional responsibility adopted by the Supreme Court.), contrary to MCR 9.104(4);

(k) Engaging in a continuing pattern of harassing, threatening, and retaliatory conduct;

(l) Failure to properly carry out the duties of chief judge, in violation of MCR 8.110(C)(1), (2) and (3);

(m) Conduct violating MCR 9.104 in that it is prejudicial to the administration of justice, contrary to MCR 9.104(1); exposes the legal profession or courts to obloquy, contempt, censure or reproach, contrary to MCR 9.104(2); and violates standards or rules of professional responsibility adopted by the Supreme Court;

(n) Discourteous, disrespectful or unfair treatment of a person because of race, gender or other protected personal characteristic, in violation of MCR 9.205(C)(7);

(o) Conduct violating the Elliott-Larsen Civil Rights Act (MCLA. 37.2101 *et seq.*), as to the racial comments made about former court employee, Jenita Moore;

(p) Inappropriate, unprofessional conduct demonstrating a lack of respect for these proceedings.

V. PROPORTIONALITY ANALYSIS

In considering what sanction to recommend to the Supreme Court, the Commission is mindful of the criteria set forth by the Supreme Court in *In re Brown*, (After Remand), 464 Mich 135, 138 (2001). Those factors include:

(1) misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct;

(2) misconduct on the bench is usually more serious than the same misconduct off the bench;

(3) misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of impropriety;

(4) misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does;

(5) misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated;

(6) misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery;

(7) misconduct that involves the unequal application of justice on the basis of such considerations as race color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship.

The Commission finds the above factors relevant to its evaluation as follows:

Factor (1): Respondent's conduct was part of a pervasive pattern of numerous and continual breaches of appropriate and ethical conduct and not an isolated instance of misconduct. Respondent had previously been sanctioned with public censure and a 90-day suspension without pay. His disdain for appropriate judicial conduct is so great that he actually engaged in some of the misconduct with which he was charged while he was on suspension and probation.

Factor (2): This factor mitigates in Respondent's favor in that the conduct complained of did not occur while Respondent was on the bench.

Factor (3): The nature and extent of Respondent's misconduct encompass all the considerations listed in factors 3 and 4, as some of his actions were prejudicial to the actual administration of justice and its appearance, while others were improper even though they may not have implicated the actual administration of justice or its appearance of impropriety. A few examples involving factor 3 include, but are not limited to, impeding the operation of the court by delaying proceedings to play card games, preventing certain court employees from carrying out their duties properly, and lengthy absences from court.

Factor (4): Examples of off-the-bench conduct include, but are not limited to, Respondent's hostile, retaliatory, aggressive actions in sending letters demanding retractions to plaintiffs in a lawsuit against him after a settlement had been agreed upon, filing a lawsuit against several individuals who were listed as

witnesses against him in these proceedings the week before the proceedings began, trying to incite a physical encounter with the attorney representing the plaintiffs in a lawsuit against him, threatening to harm the Allen Park City Attorney and City Council members by releasing potentially damaging information if they voted on certain draft proposals he believed were to be passed. Although these acts by Respondent may not implicate the actual administration of justice or its appearance of impropriety with respect to Respondent's on-the-bench activity, they interfered with the administration of justice with respect to the case against him. Further, the impropriety and appearance of impropriety of such actions violates Canon 2 of the Code of Judicial Conduct.

Factor (5): This factor contributes to the egregious nature of Respondent's conduct as his actions were frequently deliberate and premeditated. Examples include, but are not limited to, his effort to obtain "disability retirement," his intentional application for workers' compensation benefits in which he claimed mental disability for the period he was on an unpaid disciplinary suspension; his intent to harass or intimidate certain individuals by sending letters demanding "retractions" and by filing a lawsuit against individuals named as witnesses to testify against him in these proceedings; planning lengthy vacations for which he rented apartments in Southern California under the guise of needing medical leaves; secretly arranging to purchase a building to be owned by the City of

Melvindale without informing the City of Allen Park which funds two-thirds of the 24th District Court budget; and suddenly deciding to terminate his participation in these proceedings without explanation.

Factor (6): This factor is relevant as to Respondent's boycotting these proceedings, beginning on the third day of the hearing on the formal complaint. Since then he has refused to contact or respond to contacts from the Master, the Examiner and Associate Examiner. His actions delayed the proceedings by one day, but in light of the admitted exhibits and witness testimony, probably did not undermine the ability to discover the truth to any great extent. However, Respondent's refusal to cooperate or participate reflect an utter contempt for the judiciary, the judicial disciplinary process, the Commission and the Supreme Court.

Factor (7): This factor may not appear relevant with respect to the "unequal application of justice" on the basis of considerations as race, ethnic background, gender or religion, but Respondent's conduct with respect to issues of sexual harassment and racially insensitive comments *is* relevant to determinations of misconduct and sanction. Treatment of a person unfairly or discourteously because of the person's race or sex constitutes misconduct *per se*. MRC 9.205(B)(1)(d) [formerly MCR 9.205 (C)(7)].

The Commission has evaluated the above criteria in connection with other factors, including the various disciplinary cases from other jurisdictions cited in the Master's Report, as well as Michigan cases such as *In re Seitz*, 441 Mich 590 (1993), in which the Supreme Court recognized that a judge's conduct must be evaluated on the basis of objective criteria, *In re Cooley,* 454 Mich 1215 (1997), in which the misappropriation of court services, facilities, equipment and other court materials constituted misconduct, and *In re Ferrara*, 458 Mich 350 (1998), in which the judge's failure to meaningfully cooperate with the proceedings was found to significantly interfere with the administration of justice.

VI. CONCLUSION

The Commission finds that Honorable Gerard Trudel has engaged in conduct clearly prejudicial to the administration of justice and misconduct in office within the meaning of Michigan Constitution 1963, Art VI § 30, as amended, and MCR 9.205, as amended. The Commission has considered the totality of Judge Trudel's conduct, including his disrespect for the disciplinary process, his volatility and pattern of abusive, threatening and erratic conduct toward court employees, colleagues, City Council members and other city officials and its overall effect on the judicial system and the public. The record in this case compels the conclusion that Respondent is unfit to be a judge. Therefore, The Commission unanimously

concludes and so recommends, that Gerard Trudel be removed from the office of Judge of the 24th District Court.

Although not part of the record before it, the Commission is aware that the Office of Retirement Services has approved Respondent's application for mental disability retirement, and Respondent has since resigned his office. The Commission does not have the authority to review the propriety and appropriateness of that determination. However, because Respondent is no longer a judge, ostensibly due to mental disability issues, the Commission recommends that the Supreme Court bar Respondent from ever holding judicial office unless the Commission first certifies that Respondent's mental disability does not affect his ability to serve as a judicial officer.

It is problematic that the nature of Respondent's alleged disability is mental.[3] When attempting to conclude why he is unable to perform the duties of a judge, the finding that he has a "paranoid narcissistic personality disorder" is relevant. If the condition is disabling, then additional sanctions may be inappropriate because one does not punish a person for being mentally ill, no matter how reprehensible the conduct it causes may have been. If one finds that Respondent's personality disorder is not what caused him to be unable to perform

[3] The Arizona Commission on Judicial Conduct has adopted a number of mitigating and aggravating factors that may be considered in determining appropriate disciplinary action. One such factor is "whether the judge was suffering from personal or emotional problems or from physical or mental disability or impairment at the time of the misconduct." Rules of the Commission on Judicial Conduct, 19(j).

the duties of a judge, then additional sanctions may be appropriate, such as a fine and the reimbursement of the out-of-pocket costs of prosecution. The credible expert testimony in this case found the specific acts of misconduct to be consistent with Respondent's personality disorder. For this reason, the Commission does not recommend additional sanctions.

VII. RECOMMENDATION

WHEREFORE, upon resolution of the Michigan Judicial Tenure Commission, it is recommended that the Michigan Supreme Court enter an order finding judicial misconduct as set forth in this Decision and Recommendation, including misconduct in office and conduct clearly prejudicial to the administration of justice. It is further recommended that the Court remove Honorable Gerard Trudel from office and bar him from ever holding judicial office unless the Commission first certifies that Respondent's mental disability does not affect his ability to serve as a judicial officer.

_____	_____
Hon. Barry Grant, Vice Chairperson	Hon. William B. Murphy
_____	_____
Carole L. Chiamp, Esq.	Hon. Pamela R. Harwood

_____	_____
Hon. James C. Kingsley	Hon. Kathleen J. McCann

STATE OF MICHIGAN
BEFORE THE JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. GERARD TRUDEL
Judge, 24th District Court
6515 Roosevelt Road
Allen Park, MI 48101-2524
_____/

DOCKET NO. 121769
FORMAL COMPLAINT NO. 68

DECISION AND RECOMMENDATION FOR ORDER OF DISCIPLINE

(Concurring in Part/Dissenting in Part)

At a session of the Michigan Judicial Tenure Commission held on March 10, 2003, at which the following Commissioners were

PRESENT: James Mick Middaugh, Chairperson
Hon. Barry M. Grant, Vice Chairperson
Richard Simonson, Secretary
Henry Baskin, Esq.
Hon. William B. Murphy
Carole L. Chiamp, Esq.
Hon. Pamela R. Harwood
Hon. James C. Kingsley
Hon. Kathleen J. McCann

We concur in the Decision and Recommendation issued this date, but we would make the further findings and recommendation: Notwithstanding that Respondent was able to convince the disability board that he was entitled to

benefits in the aggregate of $335,283.80, the record is replete with evidence to establish that Respondent's acts of judicial misconduct were by design, not by disease. The inescapable conclusion is that the "medical adviser" under the judges' disability retirement statute was not fully aware of the extent of Respondent's manipulative behavior. The Commission, however, having more information than the medical adviser and being aware of the full range of Respondent's misconduct cannot allow him to inappropriately benefit himself by this claimed "mental illness."

A. Respondent's attempts to collect a "medical disability" retirement were bogus

Dan Norberg, from the Office of Retirement Services of the State of Michigan, testified that Respondent signed a disability retirement application on October 29, 2002, the day of a scheduled hearing in this matter, and the day after he first failed to appear for the hearing. (Exhibit 67, and TR, 2/10/03 Hearing Before Commission, pp. 12-13, *Norberg*). If Respondent retired, resigned or otherwise left office, he would not be eligible to collect any retirement benefits until he reached the age of 60, based on his current years of service. However, if Respondent were successful in pursuing a claim for "disability retirement" pursuant to the terms of MCL 38.2507, he would begin to collect his full retirement benefits immediately. (*Id*. at 12-14.)

More specifically, Respondent is a member of the "Defined Benefits" plan. If Respondent left office, he would begin to collect a pension of $33,528.38 per year as of August 1, 2013, *i.e.*, the first of the month after he turns 60. If Respondent were able to retire under the "disability retirement" program, he would begin to receive that $33,528.38 per year immediately. Thus, if Respondent began to collect disability retirement now, as opposed to waiting for his regular retirement benefits upon reaching age 60, he will collect $33,528.38 for the next ten years, for a total of $335,283.80. (*Id*., at 11, 14, 16-17)

Apparently unknown to the disability board, among other facts, was that Respondent was actively pursuing a nightclub opportunity. John Ciotti, from the Building Department of the City of Allen Park testified that Respondent has actively been involved in working to open a restaurant/bar/music facility in the City of Allen Park. (TR, 2/10/03 Hearing Before Commission, pp. 23-24, *Ciotti*) Mr. Ciotti has had frequent contact with the Respondent, the last time on February 6, 2003. (Exhibit 68, and *id*. At 24-25)

B. Additional Findings Regarding Costs Incurred

The Examiner also presented an affidavit from Camella Thompson, Senior Administrative Assistant of the Judicial Tenure Commission. Ms. Thompson's affidavit showed that the Commission has incurred expenditures in the amount of

$12,777.33 in court reporter fees, witness fees, and other litigation expenses, excluding Master's fees. (Exhibit 69)

C. Summary of All Findings of Fact

In summary, we find that the proven allegations, taken together, establish Judge Gerard Trudel as a manipulative individual whose attempts to obtain disability benefits for a period he was on disciplinary suspension and to obtain a "disability retirement" border on fraudulent conduct. In an act of retaliation against the citizens of the city that he served, he purchased a building out of the court's budget, for the court's use, without the city's knowledge, causing the city to pay two-thirds of its annual budget. His pretense of "depression" induced his therapist to recommend "indefinite leaves" which were nothing more than preplanned, extended vacations in the Southwest United States.

Gerald Trudel ceased participation in these proceedings, again claiming mental stress to his therapist, while representing himself fully and competently in a civil case in which he was the plaintiff. He continued socializing with friends and relatives, and actively planned and pursued an alternative business venture. Judge Trudel engaged in threatening and retaliatory acts. He used his judicial position to harass and intimidate dozens of individuals, including, but not limited to, court personnel and city officials with whom he dealt in an official capacity, both in and

out of court. He sexually harassed a female employee, made racially insensitive remarks to and about another female employee, and singled out certain female employees for special attention. He misused court time, personnel, facilities and equipment and abused the system.

CONCLUSION

It is obvious that Judge Trudel used his license to judge others to behave in the above manner. He leveraged his judgeship to achieve personal gain. His abuse of his judicial oath is unchallenged. In the continuance of this arrogant and disdainful behavior, he failed to appear after the ***second*** day of hearing, refused to respond to contacts and questions by the Master.

He feigned severe depression that made him unable to continue these proceedings, while appearing for trial, ***on the same day*** in a civil case in which he was the plaintiff. Judge Trudel freely pursued his own course of action, without regard for the impact or consequence to others. He revealed not only an inability to conduct himself in a manner befitting a judge, but also an inability to comprehend the inappropriateness of his conduct and the impact on the public and on the judicial system. He would not have been able to "successfully" engage in these aggressive, illegal, insensitive, threatening, retaliatory, offensive, disrespectful, and demonic acts if he were not a judge.

We find that the Honorable Gerard Trudel has engaged in conduct clearly prejudicial to the administration of justice and misconduct in office within the meaning of Michigan Constitution 1963, Art VI § 30, as amended, and MCR 9.205, as amended. We have considered the totality of Judge Trudel's manipulative and fraudulent conduct, his malingering, his disrespect for the disciplinary process, his volatility and pattern of abusive, threatening and erratic conduct toward court employees, colleagues, City Council members and other city officials and its overall effect on the judicial system and the public. The record in this case obviously compels the conclusion that he is unfit to be a judge. Therefore, we concur that Hon. Gerard Trudel be removed from the office of Judge of the 24th District Court and that he be barred from ever serving as a judge in the future unless certified "disability-free" and appropriate by the Commission.

In light of Respondent's actions to benefit himself to the disadvantage of the citizens of this State, by claiming his prolonged vacations were "medically required," the Respondent's attempts and ability to collect "disability retirement" is utterly disingenuous and disregards the intent of the legislation, and constitutes misconduct as set forth in the Michigan Constitution 1963, Art VI § 30, as amended, and MCR 9.205, as amended.

Respondent has never adequately accounted for the necessity to take vacation time at public expense. On the first occasion, for "medical reasons," as he

termed them, he was in daily contact with the 24th District Court, running the Court from this prolonged vacation. We conclude that Respondent's seeking of a "disability retirement" is inapposite to the meaning and intent of the legislation that allows the disabled to accept public funds where they are unable to work.

Respondent's having filed and received "disability retirement" when, from all appearances, he is ***not*** disabled, defiles and disparages the true intent of disability retirement. Respondent's application is dated October 29, 2002, while the hearing on the formal complaint was ongoing. Respondent essentially disengaged himself from the process on the eve of his hearing before the Commission which allowed time for the processing of his disability. We believe he misused the disability retirement statute and that misconduct should not be rewarded.

We believe the egregious nature of Respondent's conduct warrants imposition of a financial sanction. He has benefited from his misconduct in that he has continued to receive a salary while on suspension since July 2, 2002. We have determined it appropriate to recommend a financial penalty in the amount of $90,000 be imposed upon Respondent for his misconduct, the lack of respect he has demonstrated for these proceedings, and the undeserved salary he has enjoyed for the last eight months.

We make this recommendation for imposition of a monetary sanction fully aware of its precedential nature. Respondent's egregious conduct in this case, however, warrants the most extreme sanctions, and we feel the addition of a financial penalty is most appropriate, particularly in light of Respondent's repeated attempts to deprive the state of Michigan of funds, by his applications for workers' compensation and disability retirement benefits, as well as a lengthy paid suspension. We see no bar to making such a recommendation, and the Supreme Court has complete authority to whatever sanction it deems appropriate.

While there is no specific provision for imposing costs or restitution, the Court has done so on several occasions. In Formal Complaint No 1, *In re Somers*, 384 Mich 320 (1971), the Court ordered a public censure and $1000 costs as partial reimbursement for the cost of the proceedings payable to the Clerk of the Court. In Formal Complaint No. 5, *In re Edgar*, and Formal Complaint No. 6, *In re Blodgett*, the Court ordered public censures and $1500 and $1000 costs, respectively, as partial reimbursement of the costs of the proceedings. See also *In re Lawrence*, 417 Mich 248 (1983), *In re Merritt*, 431 Mich 1211 (1988), *In re Cooley,* 454 Mich 1215 (1997) *and In re Radzibon*, 457 Mich 1201 (1998), where the Court ordered costs, reimbursement or restitution.

Respondent judges in other jurisdictions have attempted to argue that imposition of financial sanctions is specifically prohibited if not provided by

statute. The courts have routinely rejected such positions. In a leading case, *Matter of Cieminski*, 270 NW2d 321 (ND 1978), Judge Cieminski contended the Supreme Court lacked authority to impose costs against him in light of a statute prohibiting an award of costs, that costs could be awarded only to the extent authorized by statute, and in the absence of a statute governing disciplinary cases, no costs could be assessed. The North Dakota Supreme Court found:

> Disciplinary proceedings are neither civil nor criminal, consequently, the rules pertaining to either do not necessarily apply. Specifically, Rule 54(e), NDRCivP, pertaining to costs and disbursements, does not apply for several reasons. Initially, Rule 54(e) is predicated on the common practice that the prevailing party is entitled to its costs and disbursements. As stated earlier, ***assessment of costs is a part of the disciplinary action and is not the same as awarding costs to either party*** as prohibited by sec. 27-23-11, NDCC, or as contemplated by Rule 54(e), NDRCivP. *Id.* at 334-335. (Emphasis added)

The Court further noted:

> The assessment of costs as a part of a disciplinary action is more than a censure, less than a suspension, but has a useful purpose and serves as a deterrent to conduct not in harmony with the Code of Judicial Conduct. *Id*. at 335.

In drawing its conclusion, the Court cited the well-established body of law holding that authorization to censure or remove implicitly includes the authority to impose lesser sanctions and considered the imposition of costs a lesser-included sanction. *Id.* at 333-334.

The Rhode Island Supreme Court similarly recognized the authority of the Commission to recommend sanctions beyond the typical specified provisions of censure, suspension, retirement and removal, and its own authority to impose other sanctions. *In re Almeida*, 611 A2d 1375 (1992). The Commission agrees with the Court's reasoning. In *Almeida*, the respondent judge requested the Court to reject the Commission's recommendation that the Court terminate his pension benefits retroactive to the date of his retirement and order him to repay those pension payments previously made. He challenged both the commission's authority to recommend termination of the pension and the authority of the court to terminate the pension. He further contended that the termination of his pension rights was a disproportionate penalty in violation of the Rhode Island Constitution. The Court determined that authority to remove a judge from judicial office implicitly carries with it the authority to recommend suspension of an active retired justice's pension benefits.

> In order to ensure the integrity of the judiciary, we find that *there are sanctions and remedial actions available that may not be expressly stated* as one of the enumerated categories of § 8-16-4. Mere exclusion of every possible potential sanction does not mean that the Legislature specifically intended to limit possible courses of action. Rather certain remedies may be implicit within the general categories of § 8-16-4 and necessary for the orderly interpretation and implementation of the statute. *The enumerated categories of possible recommendations are guideposts rather than strict limitations on the extent of sanctions the commission may recommend.* We

believe that *within the recommendation of removal of a member of the judiciary as a remedy is the implicit power to recommend those penalties incidental to a judge's removal.* In the present case we find that incidental to the removal of petitioner from his standing as an active retired justice is termination of his pension benefits.

Some courts espouse the view that removal of the duties and obligations of the position includes removal and forfeiture of the rights and benefits accruing by virtue of the position, including retirement benefits. See *Hogan v Bronner*, 491 So.2d 226, 227 (Ala. 1986); *Ballurion v Castellini*, 29 N. J. Super. 383, 390, 102 A2d 662, 666 (1954). We find this statement of law to be appropriate and applicable in meeting the goals sought to be achieved by the Legislature in this jurisdiction. In the present case we find that removal of a retired justice carries with it the implication that his or her continued right to receive pension benefits should be considered. *Therefore, the authority to recommend removal from office implicitly carries with it the authority to recommend remedial measures necessary to effectuate the statute, including, but not limited to, suspension of the removed retired justice's pension benefits.* The commission's recommendations are, in fact, only recommendations that provide guidance and assistance to this court in its determination of the appropriate course of action. The commission acts, therefore, as a reference source for this court on the issue or removal and imposition of penalties upon a member of the Judiciary. Pursuant to § 8-16-6(a), as amended by P.L.1987, ch. 492, § 1, the Legislature expressly granted this court significant latitude with respect to considering the commission's recommendations, providing: The supreme court may, upon review of a recommendation of censure, suspension, immediate temporary suspension, reprimand, retirement, or removal, affirm, modify, or reject such recommendation of the commission. . . (Emphasis added) *Id*. at 1380-1381.

The Rhode Island Supreme Court reaffirmed the commission's authority to recommend and the Court's authority to order unspecified "other" sanctions in *In re Lallo*, 768 A2d 921 (RI 2001). In *Lallo*, the Commission recommended a monetary penalty in the amount of $28,000. The respondent judge argued the sanction was not civil in nature, but rather a penal sanction in the nature of a fine constituting punishment, a remedy not within the jurisdiction of the commission, and that the legislative grant of authority to recommend removal does not include the authority to impose a monetary sanction. Notably similar to some of the charges against Respondent Judge Trudel, the commission in *Lallo* recommended the monetary sanction was in the nature of restitution to the state for the time the judge was paid while he was not at work (he was absent on some sixty-six occasions to gamble). The Court concluded the monetary sanction was civil and restitutionary in nature and not punitive. The Court commended the commission for its attempt to recommend an appropriate sanction for respondent's misconduct, but was not satisfied that the calculation of the value of services for which the taxpayers were shortchanged was appropriate. The Commission had acknowledged the $28,000 was a "rough calculation" of the value of the services. *Id.* at 925. The court remanded for a recalculation and noted the commission, in its discretion could include or factor in an element for the cost of prosecution of the case. *Id*. On remand, based upon the Commission's supplemental report and

recommendation, the Court imposed a penalty of $19,657.00 upon the respondent judge, including the value of respondent's services and certain of the commission's out of pocket expenses. *In re Lallo*, 796 A2d 467 (RI 2002).

We believe Respondent should not be permitted to benefit from his misconduct. A significant financial sanction constituting restitution to the State of Michigan for his paid vacations and suspension, and termination of any disability retirement benefits Respondent has obtained through misrepresentation of his mental state is appropriate and would restore the well-deserved perception of the integrity of Michigan's judiciary.

RECOMMENDATION

Accordingly, we recommend that the Michigan Supreme Court enter an order finding judicial misconduct as set forth in this Decision and Recommendation, including misconduct in office and conduct clearly prejudicial to the administration of justice. It is further recommended that the Court remove Honorable Gerard Trudel from office and

(1) Order him to reimburse the Commission for the actual costs stemming from this case in the amount of $12,777.33 plus the Master's fees;

(2) Fine him in the amount of $90,000;

(3) Bar him from ever serving as a judge again unless the Commission certifies to the Supreme Court that he is fit to serve in that capacity;

(4) Order the return of the *premature* retirement benefits; and

(5) Remand the application for benefits to the disability retirement board.

_____	_____
Henry Baskin,Esq.	James Mick Middaugh, Chairperson

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Richard D. Simonson

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